IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3621 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMANBHAI JENABHAI VAGHELA - Petitioner(s)
Versus
BHUPATBHAI MOHANBHAI VAGHELA & 2 - Respondent(s)

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Appearance :
MR HM PARIKH for Petitioner(s) : 1,
MR PJ YAGNIK for Respondent(s) : 1 - 2.
UNSERVED-EXPIRED (N) for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/04/2007

ORAL JUDGMENT

1. In this petition, the petitioner has challenged the order dated 05/07/96 passed by the 4th Joint Civil

Judge (SD), Nadiad below Exhibit 35 in Regular Civil Suit No. 33/86.

2. The short facts leading to the present petition are as follows:

2.1 The respondents no. 1 and 2 herein have filed above mentioned Regular Civil Suit No. 33/86 against the present petitioner seeking permanent injunction. The plaintiffs have also preferred application Exhibit 5 seeking temporary injunction from the trial court. Such application was however turned down by the trial court holding that the petitioner is in possession of the disputed land.

2.2 The learned Judge thereafter framed issues after hearing both sides. Issue no. 6 raised by the trial court reads as under”

> “6. Whether the defendant no.1 proves that he has become deemed purchaser of the suit property under the Tenancy Act as alleged.”

2.3 After framing of the issues, the original plaintiffs i.e. respondents no. 1 and 2 herein moved an application Exhibit 35 before the learned Judge seeking deletion of issue no. 6. It appears that hearing of this petition was fixed on 05.07.96. On that day, learned advocate for the defendant no.1 i.e. the petitioner herein had given application Exhibit 42 seeking adjournment of the proceedings on the ground that the advocate was away. It is the case of the petitioner so specifically stated in the petition and which has not been denied by the opponents herein that the learned Judge actually granted the said application for adjournment filed on behalf of the petitioner.

2.4 Despite this, by the impugned order passed on 05.07.96, the learned Judge allowed the application Exhibit 35 filed by the plaintiffs and deleted issue no.6 from the list of issues to be decided by the trial court.

3. Being aggrieved by the said order dated 05.07.96, the petitioner initially preferred a Revision

Application and later on converted the same into present petition with the leave of the court.

4. Having heard learned advocate, Mr Parikh for the petitioner and having perused the materials on record, I find that the order under challenge cannot sustain. On 05.07.96, the petitioner gave an application for adjournment of the proceedings. Hearing of the case as stated by the petitioner came to be adjourned by the trial court by granting such application. Once the application for adjournment was granted there was thereafter no scope for proceeding with the hearing of any connected application or for passing any order thereon. The impugned order also suggests that the same was passed after hearing the advocate for the plaintiffs further indicating that advocate for respondent no.1 of the civil suit i.e. the present petitioner was not present. That being so, the impugned order dated 05.07.96 is quashed only on this ground. The proceedings are remanded to the learned Judge for fresh consideration and in accordance with law. In particular the learned Judge shall rehear Exhibit 35 application of the plaintiffs by giving opportunity to both sides to advance their arguments.

5. In the result, the impugned order dated 05.07.96 passed by the 4th Joint Civil Judge (SD), Nadiad below Exhibit 35 in Regular Civil Suit No. 33/86 is quashed in the above terms. Rule is made absolute accordingly. No order as to costs.

(AKIL KURESHI, J.)

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